

# STATE OF NORTH DAKOTA

**DEPARTMENT OF HUMAN SERVICES**  
***Southeast Human Service Center***  
***2624 9<sup>th</sup> Avenue SW***  
***Fargo, ND 58103***

## Request For Proposal (RFP)

RFP Title: Case Aides and/or Respite Care

RFP Number: 325-05-35-019

Date of Issue: May 17, 2005

Purpose of RFP: The purpose of this competitive RFP is to solicit an application from agencies for the provision of quality case aide and/or respite care services to children and adolescents with serious emotional disorders and/or dual diagnoses in Region V of the state of North Dakota.

Offerors are not required to return this form.

**Procurement Officer: Greg Clark**  
**Southeast Human Service Center**  
**2624 9<sup>th</sup> Avenue SW**  
**Fargo, ND 58103**  
**701 298-4429**  
<mailto:85clag@state.nd.us>

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## **SECTION ONE INTRODUCTION AND INSTRUCTIONS**

### **1.01**

#### **Purpose of the RFP**

The Department of Human Services, Southeast Human Service Center, hereafter known as “purchasing agency” is soliciting proposals for the provision of quality case aide services to children and adolescents with serious emotional disorders and/or dual diagnoses in Region V of the state of North Dakota; and/or respite care services for children who have disabilities including chronically or terminally ill children, and/or children with serious behavioral or emotional problems and drug affected children.

### **1.02**

#### **Contact Person, Telephone, Fax, E-mail**

PROCUREMENT OFFICER: Greg Clark  
PHONE: 701 298-4429  
FAX: 701 298-4400  
TTY Users call: 1-800-366-6888 (Relay North Dakota)  
E-MAIL: 85clag@state.nd.us

The procurement officer is the point of contact for this RFP. All vendor communications regarding this RFP must be directed to the procurement officer. Unauthorized contact regarding the RFP with other State employees of the purchasing agency may result in the vendor being disqualified, and the vendor may also be suspended or disbarred from the state bidders list.

### **1.03**

#### **RFP Schedule**

This schedule of events represents the State’s best estimate of the schedule that will be followed for this RFP. If a component of this schedule, such as the deadline for receipt of proposals, is delayed, the rest of the schedule will be shifted by the same number of days.

The approximate RFP schedule is as follows:

- RFP Issued: 05/17/2005
- Deadline for receipt of questions and objections related to the RFP: 05/23/2005
- RFP Due: 05/31/2005
- Proposal Evaluation Committee evaluation completed by approximately: 06/06/2005
- State issues Notice of Intent to Award a Contract approximately: 06/08/2005
- State issues contract approximately: 06/15/2005
- Contract start: 07/01/2005

#### **1.04**

##### **Return Mailing Address and Deadline for Receipt of Proposals**

Offerors must submit one (1) original and four (4) copies of its proposal in a sealed envelope or package.

Envelopes or packages containing proposals must be clearly addressed as described below to ensure proper delivery and to avoid being opened by the State before the deadline for receipt. Envelopes or packages must be addressed as follows:

**DEPARTMENT OF HUMAN SERVICES**  
Southeast Human Service Center  
Request for Proposal (RFP): Case Aides and/or Respite Care  
RFP Number: 325-05-35-019  
Southeast Human Service Center  
2624 9<sup>th</sup> Avenue SW  
Fargo, ND 58103-2350

Proposals must be received by the purchasing agency at the location specified no later than 5:00 P.M., Central Time on May 31, 2005. Proposals will not be publicly read at the opening.

Proposals may not be delivered orally, by facsimile transmission, by other telecommunication or electronic means. Offerors may fax or electronically transmit signed proposals to a third party who must deliver the proposal to the location indicated above by the date and time designated as the deadline for receipt of proposals.

Offerors assume the risk of the method of dispatch chosen. The State of North Dakota ("State") assumes no responsibility for delays caused by any delivery service. Postmarking by the due date will not substitute for actual proposal receipt by the State. An offeror's failure to submit its proposal prior to the deadline will cause the proposal to be rejected. Late proposals or amendments will not be opened or accepted for evaluation.

#### **1.05**

##### **Assistance to Offerors with a Disability**

Offerors with a disability that need an accommodation should contact the procurement officer prior to the deadline for receipt of proposals so that reasonable accommodation can be made.

#### **1.06**

##### **Deadline for Receipt of Questions and Objections**

Offerors must carefully review this solicitation, the contract, and all attachments for defects, questionable, or objectionable material. All questions must be in writing and directed to the purchasing agency, addressed to the procurement officer, and cite the subject RFP number. The procurement officer must receive these written requests by the deadline specified in the RFP Schedule of Events to allow issuance of any necessary amendments.

This will also help prevent the opening of a defective solicitation and exposure of offeror's proposals upon which an award could not be made. Protests based on the content of the solicitation will be disallowed if these faults have not been brought to the attention of the procurement officer, in writing, before the time indicated in the Schedule of Events.

If the question may be answered by directing the questioner to a specific section of the RFP, then the procurement officer may answer the question over the telephone. Other questions may be more complex and may require a written amendment to the RFP. The procurement officer will make this determination.

Oral communications are considered unofficial and non-binding on the State. The offeror must confirm telephone conversations in writing.

#### **1.07**

##### **Approved Vendor Registration Requirements**

#### **VENDORS MUST BE APPROVED BEFORE CONTRACT AWARD**

Proposals will be accepted from vendors that are not currently approved vendors on the State's bidders list; however, the successful offeror will be required to become approved prior to award.

To become an approved vendor, offerors must: 1) be registered with the North Dakota Secretary of State (fees apply), and 2) submit a completed Bidders List Application to the North Dakota Vendor Registry Office. Prospective offerors may access the Procurement Vendor Database on-line to verify whether their firm is currently on the bidders list. The bidders list that will be used for this solicitation is commodity code 952-62.

The Procurement Vendor Database, registration instructions and forms are available on-line at: <http://www.state.nd.us/csd/spo/vendor-resources.htm>. Contact the Vendor Registry Office at 701-328-2773 or [infospo@state.nd.us](mailto:infospo@state.nd.us) for assistance.

The successful offeror must register and become approved within 30 calendar days from the date of the Notice of Intent to Award. If an offeror fails to become approved by the time specified by the Procurement Officer, its proposal will be determined to be non-responsive, and its proposal will be rejected.

#### **1.08**

##### **Pre-proposal Conference**

No pre-proposal conference will be held for this RFP. Offerors are advised to carefully review the RFP and all attachments and submit all questions to the procurement officer by the deadline indicated for submission of questions in the schedule of events.

#### **1.09**

##### **Amendments to the RFP**

If an amendment to this RFP is issued, it will be provided to all offerors that were mailed a copy of the RFP and to those that have requested a copy of the RFP from the procurement officer.

#### **1.10**

##### **News Releases**

News releases related to this RFP will not be made without prior approval of the procurement officer or project manager designated by the State.

#### **1.11**

##### **Notice Provided**

Notice of this solicitation has been provided in accordance with N.D.C.C. § 54-44.4-09.

The Request for Proposal and any amendments to the RFP will be posted on the following website: <http://www.state.nd.us/humanservices>.

## **1.12**

### **Letter of Interest**

Vendors interested in receiving any notices related to this RFP are invited to contact the procurement officer with the name of their firm, contact person, mailing address, telephone number, fax number, and e-mail address. The sole purpose of the letter of interest is to provide the purchasing agency with a contact person to receive any notices related to the RFP. Submission of a letter of interest is not a requirement for submitting a proposal.

## **SECTION TWO BACKGROUND INFORMATION**

### **2.01**

#### **Background Information**

Background information concerning this project is as follows:

##### *Philosophy and Goals (Case Aides)*

The purpose of case aide services is to provide behavior management assistance and role modeling in order to benefit a child or adolescent with a serious emotional disorder and/or dual diagnoses. The intent is to maintain youth in family-based, supportive, and least restrictive community environment.

Behavior management assistance is provided to help youth stabilize, reduce, or eliminate undesirable behaviors that put them at risk of being served in restrictive settings such as residential treatment centers or psychiatric hospitals.

Role modeling is provided to help youth and their families learn and observe appropriate behavioral and emotional responses to situations that trigger their medical symptoms.

##### *Philosophy and Goals (Respite Care)*

The purpose of respite care service is to provide support to strengthen parents' capacity to care for their children who have disabilities including chronically or terminally ill children, children with serious behavioral or emotional problems and drug affected children. This support helps reduce the number of stressors in the family, reduces the child's risk of out-of-home placement, and helps prevent the possibility of abuse or neglect. This service will be especially helpful to families who lack traditional supports, such as extended family members who can occasionally relieve parents of their caregiving responsibilities. Respite care services will also give affected children a positive, supportive experience with a significant adult other than their parents.

##### *Referrals:*

Individual referrals will come from the Southeast Human Service catchment area (Region V: Cass, Steele, Traill, Richland, Sargent, and Ransom Counties). All referrals will be screened through SEHSC and have a case manager at SEHSC. For case aide services, there will be an individualized treatment plan with specific goals outlined for the child and/or family including tasks for the case aides to address. The case manager in conjunction with the family/clinical team and provider will determine the length of service.

Respite care service is provided to families based on the individual need of the family. Up to 180 hours of care may be approved per family per year.

## **2.02 Budget**

The estimated budget for completion of this project is **\$116,485 for case aides** and **\$113,000 for Respite Care**. Proposal priced at more than **\$240,000** will be considered non-responsive.

## **SECTION THREE SCOPE OF WORK**

### **3.01 Scope of Work**

Southeast Human Service Center, (SEHSC) is requesting proposals for case aide services and/or respite care services for children and adolescents with serious emotional disorders and/or dual diagnoses.

The purpose of this competitive RFP is to solicit proposals from agencies for the provision of quality case aide services and/or respite care services to children and adolescents with serious emotional disorders and/or dual diagnoses in Region V of the state of North Dakota.

Eligible offerors are agencies who have demonstrated experience and expertise in the delivery of case aide and/or respite services to children and adolescents with serious emotional disorders and/or dual diagnoses.

Offerors should place bids on case aide and/or respite care services. Budgets should be developed addressing a daily or monthly rate per service. SEHSC will consider a monthly rate for the full service.

Offerors should describe the process for managing Protected Health Information and how the HIPAA privacy regulations will be met. Offerors should also describe their protocol for insuring compliance with 42 CFR Part 2 (federal substance abuse confidentiality regulations).

#### **A. Statement of Agency Background and Treatment Philosophy Regarding Clients, Staff, and Service Delivery.**

Identify the offeror's role in the community as well as any history of any services that clearly define the offeror's capacity to provide case aide and/or respite care services to children and adolescents with serious emotional disorders and/or dual diagnoses.

#### **B. Agency's Current Use of Case Aides and/or Respite Care**

Describe offeror's current use/experience with provision of case aides and/or respite care.

#### **C. Program Description/Evaluation**

Provide an abbreviated and informative summary of the proposed program, including purpose, anticipated accomplishments, i.e. numbers of clients served.

Describe the procedure for ongoing program evaluation and client/guardian satisfaction.

#### **D. Caregiver Qualifications**

Identify required minimum qualifications of caregivers providing services and supervision.

**E. Caregiver Selection**

Describe the manner by which SEHSC/Director of Children and Family Services or the Partnership Unit Supervisor will be notified of caregiver schedules and/or changes.

**F. Organizational Chart**

Include a current organizational chart.

**G. Networking**

Describe the offeror's relationship with various programs and agencies in the region and how they offeror will utilize other resources in the provision of case aide/respite care services to children and adolescents with serious emotional disorders and/or dual diagnoses.

**H. Budget Narrative**

The budget narrative should be as detailed as possible, listing the individual cost items in each budget category.

**I. Letters of Support**

Submit a maximum of three letters of support; two of the three must demonstrate the offeror's capacity to network with local agencies and organizations.

**3.02**

**Location of Work**

Case Aide and/or respite care will be provided in the community in which the child resides. Services may be provided in a community setting or in the child's home. Preference will be given to services provided in a licensed foster home.

The State will not provide workspace for the contractor.

**3.03**

**Prior Experience**

Briefly describe, if any, the programs in your agency that currently provide case aide/Respite care services to children and adolescents with serious emotional disorders and/or dual diagnoses concerns. Also note the hours staff persons in these programs are accessible to clients.

**3.04**

**Required Licenses**

The successful offeror must ensure that the homes in which case aide and/or respite care is being provided has been licensed for foster care.

## **SECTION FOUR GENERAL CONTRACT INFORMATION**

### **4.01**

#### **Contract Term and Renewal Options**

The State intends to enter into a contract with an effective date beginning July 1, 2005 and ending June 30, 2007.

This contract may be renewed upon satisfactory completion of the initial contract term. The state reserves the right to execute up to **ONE** option to renew this contract bi-annually under the same terms and conditions for a period of 24 **MONTHS**. This contract will not automatically renew. The State will provide written notice to the contractor of its intent to renew this contract at least **60 days** before the scheduled contract expiration date.

### **4.02**

#### **Standard Contract Provisions**

The successful offeror will be required to sign and submit the contract attached to this RFP (Attachment B). The contractor must comply with the contract provisions set out in this attachment. Any objections to the contract provisions must be set out in the offeror's proposal. No alteration of these provisions will be permitted without prior written approval from the purchasing agency.

Offerors are instructed to contact the procurement officer in writing by the deadline set for questions with any concerns regarding the contract provisions.

### **4.03**

#### **Proposal as a Part of the Contract**

Part or all of this RFP and the successful proposal may be incorporated into the contract.

### **4.04**

#### **Additional Terms and Conditions**

The State reserves the right to add, delete, or modify terms and conditions during contract negotiations. These terms and conditions will be within the scope of the RFP and will not affect the proposal evaluations.

### **4.05**

#### **Supplemental Terms and Conditions**

Proposals including supplemental terms and conditions may be accepted, but supplemental conditions that conflict with those contained in this RFP or that diminish the State's right's under any contract resulting from the RFP will be considered null and void. The State is not responsible for identifying conflicting supplemental terms and conditions before issuing a contract award. After award of contract:

- (a) if conflict arises between a supplemental term or condition included in the proposal and a term or condition of the RFP, the term or condition of the RFP will prevail; and
- (b) if the State's rights would be diminished as a result of application of a supplemental term or condition included in the proposal, the supplemental term or condition will be considered null and void.

### **4.06**

#### **Contract Approval**

This RFP does not, by itself, obligate the State. The State's obligation will commence when the

purchasing agency approves the contract. Upon written notice to the contractor, the State may set a different starting date for the contract. The State will not be responsible for any work done by the contractor, even work done in good faith, if it occurs prior to the contract start date set by the State.

#### **4.07**

##### **Proposed Payment Procedures**

The State will make payments based on a negotiated payment schedule. Each billing must consist of an invoice and progress report. No payment will be made until the progress report and the project director has approved invoice.

The State will not make any advanced payments under this contract.

#### **4.08**

##### **Termination for Default**

If the project manager designated by the purchasing agency determines that the contractor has refused to perform the work or has failed to perform the work with diligence as to ensure its timely and accurate completion, the State may, by providing written notice to the contractor, terminate the contractor's right to proceed with part or all of the remaining work.

This clause does not restrict the State's right to termination under the contract provisions of the Service Contract, attached.

## **SECTION FIVE EVALUATION CRITERIA AND CONTRACTOR SELECTION**

### **THE TOTAL NUMBER OF POINTS USED TO SCORE THIS CONTRACT IS 100**

#### **5.01**

##### **Understanding of the Project**

**Five Percent (5%)** of the total possible evaluation points will be assigned to this criterion.

Proposals will be evaluated against the questions set out below:

- [a] Has the offeror demonstrated a thorough understanding of the purpose and scope of the project?
- [b] How well has the offeror identified pertinent issues and potential problems related to the project?
- [c] Has the offeror demonstrated an understanding of the deliverables the State expects it to provide?
- [d] Has the offeror demonstrated an understanding of the State's time schedule and can meet it?
- [e] Is the proposal submitted responsive to all material requirements in the RFP?

## 5.02

### Methodology Used for the Project

*Twenty Percent (20%)* of the total possible evaluation points will be assigned to this criterion.

Proposals will be evaluated against the questions set out below:

- a] Does the methodology depict a logical approach to fulfilling the requirements of the RFP?
- [b] Does the methodology match and achieve the objectives set out in the proposal?
- [c] Does the methodology interface with the time schedule in the proposal?
- [d] Does the methodology have provisions for quality assurance?

## 5.03

### Management Plan for the Project

*Twenty Percent (20%)* of the total possible evaluation points will be assigned to this criterion.

Proposals will be evaluated against the questions set out below:

- [a] How well does the management plan support all of the project requirements and logically lead to the deliverables required in the RFP?
- [b] How well is accountability completely and clearly defined?
- [c] Is the organization of the project team clear?
- [d] How well does the management plan illustrate the lines of authority and communication?
- [e] To what extent does the offeror already have the hardware, software, equipment, and licenses necessary to perform the contract?
- [f] Does it appear that offeror can meet the schedule set out in the RFP?
- [g] Has the contractor gone beyond the minimum tasks necessary to meet the objectives of the RFP?
- [h] Is the proposal practical, feasible, and within budget?

## 5.04

### Experience and Qualifications

*Fifteen percent (15%)* of the total possible points will be assigned to this criterion.

If the RFP required a minimum amount of experience or qualifications, no points will be awarded for meeting the minimum. Points will be awarded for experience and qualifications that exceed the stated minimums. Proposals will be evaluated against the questions set out below:

#### Questions regarding the personnel.

- [a] Do the individuals assigned to the project have experience on similar projects?

[b] How extensive is the applicable education and experience of the personnel designated to work on the project?

**Questions regarding the firm.**

[c] How successful is the general history of the firm regarding timely and successful completion of projects?

**5.05**

**Contract Cost**

**Forty percent (40%)** of the total possible evaluation points will be assigned to cost.

Any prompt payment discounts terms proposed by the offeror will not be considered in evaluating cost. The cost amount used for evaluation may be affected by the application of North Dakota preference laws (N.D.C.C. § 44-08-01). The lowest cost proposal will receive the maximum number of points allocated to cost. The point allocations for cost on the other proposals will be evaluated according to the method set forth in the Proposal Evaluation form attached to this RFP.

**SECTION SIX  
PROPOSAL FORMAT AND CONTENT**

**6.01**

**Proposal Format and Content**

The State discourages overly lengthy and costly proposals; however, in order for the State to evaluate proposals fairly and completely, offerors must follow the format set out in this RFP and provide all information requested.

**6.02**

**Introduction**

Proposals must include the complete name and address of offeror's firm and the name, mailing address, and telephone number of the person the State should contact regarding the proposal.

Proposals must confirm that the offeror will comply with all provisions in this RFP. The proposal must disclose any instances where the firm or any individuals working on the contract has a possible conflict of interest and, if so, the nature of that conflict (e.g. employed by the State of North Dakota).

Proposals must be signed by a company officer empowered to bind the company. An offeror's failure to include these items in the proposals may cause the proposal to be determined to be non-responsive and the proposal may be rejected.

**6.03**

**Understanding of the Project**

Offerors must provide comprehensive narrative statements that illustrate their understanding of the requirements of the project, deliverables, project schedule, and contract terms and conditions. Offerors must also identify any pertinent issues and potential problems related to the project.

#### **6.04**

##### **Methodology Used for the Project**

Offerors must provide comprehensive narrative statements that set out the methodology it intends to employ. Offerors must illustrate how the methodology will serve to accomplish the work and provide the deliverables described in the scope of work within the State's project schedule.

#### **6.05**

##### **Management Plan for the Project**

Offerors must provide comprehensive narrative statements that set out the management plan it intends to follow and illustrate how the plan will serve to accomplish the work and furnish the deliverables described in the scope of work within the State's project schedule. Offerors must provide a narrative or organizational chart that describes the organization of the project team. The organizational chart must illustrate the lines of authority, designate the individual responsible and accountable for the completion of each component and deliverable of the RFP, and indicate where the work will be performed.

#### **6.06**

##### **Experience and Qualifications**

Offerors must describe the experience of their firm in completing similar projects. Additionally, offerors must provide information specific to the personnel assigned to accomplish the work called for in this RFP.

#### **6.07**

##### **Cost Proposal**

Cost proposals must include an itemized list of all direct and indirect costs associated with the performance of the contract, including budgets addressing a daily or monthly rate per service., direct expenses, payroll, supplies, overhead assigned to each person working on the project, percentage of each person's time devoted to the project, and profit.

All costs associated with the contract must be stated in U.S. currency. Any commodities being imported must be identified, and the price must include any applicable customs, brokerage agency fees, and duties.

Offerors should describe any discounts terms for prompt payment. Discounts for prompt payment will not be considered in evaluating cost.

Offerors must complete cost proposal attached to this RFP or prepare a cost proposal following the same format.

#### **6.08**

##### **Required Enclosures**

Offerors must provide all documents, samples, or other information specifically required in this RFP.

## **SECTION SEVEN STANDARD PROPOSAL INFORMATION**

#### **7.01**

##### **Authorized Signature**

An individual authorized to bind the offeror to the provisions of the RFP must sign all proposals.

#### **7.02**

## **State Not Responsible for Preparation Costs**

The State will not pay any cost associated with the preparation, submittal, presentation, or evaluation of any proposal.

### **7.03**

#### **Conflict of Interest**

Offerors must disclose any instances where the firm or any individuals working on the contract has a possible conflict of interest and, if so, the nature of that conflict (e.g. employed by the State of North Dakota). The State reserves the right to cancel the award if any interest disclosed from any source could either give the appearance of a conflict or cause speculation as to the objectivity of the offeror's proposal. The State's determination regarding any questions of conflict of interest is final.

### **7.04**

#### **Offeror's Certification**

By signature on the proposal, an offeror certifies that it complies with:

- a) the laws of the State of North Dakota;
- b) North Dakota Administrative Code;
- c) all applicable local, state, and federal laws, code, and regulations;
- d) the applicable portion of the Federal Civil Rights Act of 1964;
- e) the Equal Employment Opportunity Act and the regulations issued by the federal government;
- f) the Americans with Disabilities Act of 1990 and the regulations issued by the federal government;
- g) all terms, conditions, and requirements set forth in this RFP;
- h) a condition that the proposal submitted was independently arrived at, without collusion;
- i) a condition that the offer will remain open and valid for the period indicated in this solicitation; and
- j) a condition that the firm and any individuals working on the contract do not have a possible conflict of interest (e.g. employed by the State of North Dakota).

If any offeror fails to comply with the provisions stated in this paragraph, the State reserves the right to reject the proposal, terminate the contract, or consider the contractor in default.

### **7.05**

#### **Offer Held firm**

Proposals must remain open and valid for at least **90 DAYS** from the deadline specified for submission of proposals. In the event award is not made within **90 DAYS**, the State will send a written request to all offerors deemed susceptible for award asking offerors to hold their price firm for a longer specified period of time.

### **7.06**

#### **Amendments to Proposals and Withdrawals of Proposals**

Offerors may amend or withdraw proposals prior to the deadline set for receipt of proposals. No amendments will be accepted after the deadline unless they are in response to the State's request. After the deadline, offerors may make a written request to withdraw proposals and provide evidence that a substantial mistake has been made. The procurement officer may permit withdrawal of the proposal upon verifying that a substantial mistake has been made, and the State may retain the offeror's bid bond or other bid type of bid security, if one was required.

### **7.07**

## **Alternate Proposals**

Offerors may submit **MORE THAN ONE** proposal for evaluation.

Alternate proposals (proposals that offer something different than what is requested) will be **CONSIDERED**.

### **7.08**

#### **Subcontractors**

Subcontractors will not be allowed.

### **7.09**

#### **Joint Ventures**

Joint ventures are acceptable. If submitting a proposal as a joint venture, the offeror must submit a copy of the joint venture agreement that identifies the principles involved and its rights and responsibilities regarding performance and payment.

### **7.10**

#### **Disclosure of Proposal Contents and Compliance with North Dakota Open Records Laws**

All proposals and other material submitted become the property of the State and may be returned only at the State's option. All proposals and related information, including detailed cost information, are exempt records and will be held in confidence until an award is made, in accordance with N.D.C.C. § 54-44.4-10(2).

Offerors may make a written request that trade secrets and other proprietary data contained in proposals be held confidential. Material considered confidential by the offeror must be clearly identified, and the offeror must include a brief statement that sets out the reasons for confidentiality. See the North Dakota Office of the Attorney General website for additional information.

<http://www.ag.state.nd.us/OpenRecords/ORM.htm>

After award, proposals will be subject to the North Dakota open records law. Records are closed or confidential only if specifically stated in law. If a request for public information is received, the procurement officer, in consultation with the Office of the Attorney General, will determine whether the information is an exception to the North Dakota open records law, and the information will be processed appropriately.

### **7.11**

#### **Evaluation of Proposals**

All proposals will be reviewed to determine if they are responsive to the requirements of this solicitation. The procurement officer or an evaluation committee will evaluate responsive proposals. The evaluation will be based solely on the evaluation factors set forth in this RFP. The evaluation will consider information obtained subsequent to any discussions with offerors determined to be reasonable for award and any demonstrations, oral presentations, or site inspections, if required in this RFP.

### **7.12**

#### **Right of Rejection**

The State reserves the right to reject any proposals, in whole or in part. Proposals received from debarred or suspended vendors will be rejected. The procurement officer may reject any proposal that is not responsive to all of the material and substantial terms, conditions, and performance requirements of the RFP.

Offerors may not qualify the proposal nor restrict the rights of the State. If an offeror does so, the procurement officer may determine the proposal to be a non-responsive counter-offer and the proposal may be rejected.

The procurement officer may waive minor informalities that:

- do not affect responsiveness;
- are merely a matter of form or format;
- do not change the relative standing or otherwise prejudice other offers;
- do not change the meaning or scope of the RFP;
- are insignificant, negligible, or immaterial in nature;
- do not reflect a material change in the work; or
- do not constitute a substantial reservation against a requirement or provision,

The State reserves the right to reject any proposal determined to be not responsive, and to reject the proposal of an offeror determined to be not responsible. The State also reserves the right to refrain from making an award if it determines it to be in its best interest.

### **7.13**

#### **Clarification of Offers**

In order to determine if a proposal is reasonably susceptible for award, communications by the procurement officer or the proposal evaluation committee are permitted with an offeror to clarify uncertainties or eliminate confusion concerning the contents of a proposal and determine responsiveness to the RFP requirements. Clarifications may not result in a material or substantive change to the proposal. The initial evaluation may be adjusted because of a clarification under this section.

After receipt of proposals, if there is a need for any substantial clarification or material change in the RFP, an amendment will be issued. The amendment will incorporate the clarification or change, and a new date and time established for new or amended proposals. Evaluations may be adjusted as a result of receiving new or amended proposals.

### **7.14**

#### **Discussions and Best and Final Offers**

The State may conduct discussions or request best and final offers with offerors that have submitted proposals determined to be reasonably susceptible for award. The State is not obligated to do so, therefore, vendors should submit their best terms (cost and technical). The purpose of these discussions is to ensure full understanding of the requirements of the RFP and the offeror's proposal. Discussions will be limited to specific sections of the RFP or proposal identified by the procurement officer. Discussions, if held, will be after initial evaluation of proposals by the proposal evaluation committee. If modifications to the proposal are made as a result of these discussions, the modifications must be put in writing.

Offerors with a disability needing accommodation should contact the procurement officer prior to the date set for discussions so that reasonable accommodation can be made.

### **7.15**

#### **Preference Laws**

The preference given to a resident North Dakota offeror will be equal to the preference given or required by the state of the nonresident bidder. A "resident" North Dakota bidder, offeror, seller, or contractor is one that has maintained a bona fide place of business within this State for at least one year prior to the date on which a contract was awarded. For a listing of state preference laws, visit the following website: [http://tpps.das.state.or.us/purchasing/pref-law/reciprocal\\_detail.php](http://tpps.das.state.or.us/purchasing/pref-law/reciprocal_detail.php) or contact the North Dakota State Procurement Office at 701-328-2683.

## **7.16**

### **Contract Negotiation**

After final evaluation, the procurement officer may negotiate with the offeror of the highest-ranked proposal. Negotiations, if held, will be within the scope of the request for proposals and limited to those items that would not have an effect on the ranking of proposals. If the highest-ranked offeror fails to provide necessary information for negotiations in a timely manner, or fails to negotiate in good faith, the State may terminate negotiations and negotiate with the offeror of the next highest-ranked proposal.

If contract negotiations are commenced, they will be held:

***Southeast Human Service Center  
2624 9<sup>th</sup> Avenue SW  
Fargo, ND 58103-2350***

If contract negotiations are held, the offeror will be responsible for all cost including its travel and per diem expenses.

## **7.17**

### **Failure to Negotiate**

If the selected offeror:

- fails to provide the information required to begin negotiations in a timely manner;
- fails to negotiate in good faith;
- indicates it cannot perform the contract within the budgeted funds available for the project; or
- if the offeror and the State, after a good faith effort, cannot come to terms,

the State may terminate negotiations with the offeror initially selected and commence negotiations with the next highest ranked offeror.

## **7.18**

### **Notice of Intent to Award - Offeror Notification of Selection**

After the completion of contract negotiation the procurement officer will issue a written Notice of Intent to Award and send copies to all offerors. The Notice of Intent Award will set out the names and addresses of all offerors and identify the proposal selected for award. The scores and placement of other offerors will not be part of the Notice of Intent to Award.

The successful offeror named in the Notice of Intent to Award is advised not to begin work, purchase materials, or enter into subcontracts relating to the project until both the successful offeror and the State sign the contract.

## **7.19**

### **Protest and Appeal**

North Dakota law provides that an interested party may protest a solicitation.

If an interested party wishes to protest the content of this RFP, the protest must be received, in writing, by the procurement officer at least seven calendar days before the deadline for receipt of proposals.

An interested party may protest the award or proposed award of a contract.

If an offeror wishes to protest the award of a contract or proposed award of a contract, the protest must be received, in writing, by the procurement officer within seven calendar days after the date the Notice of Intent to Award was issued.

## **SECTION EIGHT ATTACHMENTS**

### **8.01 Attachments**

#### **Attachments**

- A. Contract Template
- B. Cost Proposal Format

**ATTACHMENT A**  
**SAMPLE CONTRACT TEMPLATE**

CONTRACT #

**PURCHASE OF SERVICE AGREEMENT**

WHEREAS, the State of North Dakota, acting through its North Dakota Department of Human Services, Southeast Human Service Center (State), has determined the services referred to in the paragraph below entitled "Scope of Service" should be purchased; and

WHEREAS, VENDOR, (Vendor) proposes to provide those services;

NOW, THEREFORE, the State and Vendor enter into the following:

**A G R E E M E N T**

**I. TERM OF THE AGREEMENT**

The term of this agreement shall be from the \_\_day of \_\_\_\_\_ 200\_ through the \_\_day of \_\_\_\_\_ 200\_. However, this agreement may be terminated with or without cause by either party giving the other party thirty (30) days prior written notice.

**II. SCOPE OF SERVICE**

The Vendor agrees to provide

**III. COMPENSATION**

The State, upon written request of the Vendor, agrees to pay the Vendor \$     for completing the scope of service. Total payment under the terms of this agreement shall not exceed \$ \_\_\_\_\_. **Final payment requests shall be submitted to the State no later than fifteen (15) days after the expiration of this agreement.**

**IV. VENDOR'S UNDERSTANDING OF TERM OF FUNDING**

The Vendor understands that this agreement is a one-time agreement, and acknowledges that it has been furnished no assurances that this agreement may be extended for periods beyond its termination date.

**V. VENDOR ASSURANCES**

This agreement shall be construed according to the laws of the State of North Dakota. In connection with the furnishing of supplies or performance of work under this agreement, persons who contract with or receive funds to provide services to the North Dakota Department of Human Services are obligated and agree to comply with all local, state and federal laws, regulations and executive orders related to the performance of this agreement including but not limited to the following: Fair Labor Standards Act, Equal Pay Act of 1963, Titles VI and VII of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, the Age Discrimination in Employment Act of 1967, the Americans with Disabilities Act of 1990, the North Dakota Human Rights Act, the Drug Abuse Prevention

Treatment and Rehabilitation Act of 1970, the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, Alcohol, Drug Abuse and Mental Health Administration Reorganization Act of 1992, the Pro-children Act of 1994, and the Drug-free Workplace Act of 1988. Questions regarding the provision of services according to these Acts may be directed to Krista L. Andrews, Contract Officer, North Dakota Department of Human Services, Judicial Wing, State Capitol, 600 E. Boulevard, Bismarck, ND 58505 (701-328-2311 or 701-328-3975 TDD).

The Vendor certifies by signing this agreement that neither the Vendor, Subcontractor, nor their principals, are presently debarred, declared ineligible or voluntarily excluded from participation in transactions with the State or Federal Government by any Department or Agency of the Federal Government.

Vendor shall be an approved vendor with the Office of Management and Budget within the State of North Dakota as required by NDCC § 54-44.4-09.

VI. AUTHORITY TO CONTRACT

The Vendor shall not have the authority to contract for or on behalf of or incur obligations on behalf of the State. However, the Vendor may subcontract with qualified Vendors of services provided that any such subcontract shall acknowledge the binding nature of this agreement, and incorporate this agreement, together with its attachments as appropriate. The Vendor agrees to be solely responsible for the performance of any subcontractor.

VII. INDEPENDENT ENTITY

The Vendor shall perform as an independent entity under this agreement. The Vendor, its employees, agents, or representatives are not employees of the State for all purposes, including but not limited to, the application of the Social Security Act, the Fair Labor Standards Act, the Federal Insurance Contribution Act, the Federal Unemployment Act, the North Dakota Unemployment Compensation Law, and the North Dakota Workers' Compensation Act. No part of this agreement shall be construed to represent the creation of an employer/employee relationship. The Vendor will retain sole and absolute discretion in the judgment of the manner and means of carrying out the Vendor's activities and responsibilities under this agreement.

VIII. NONPERFORMANCE

Failure by the Vendor to perform the terms of this agreement shall constitute a breach of contract, and shall result in the immediate termination of the agreement. In the event of a termination for breach by the Vendor, the State may retain, as liquidated damages, any payment to be made under this agreement which remains unpaid at the time of the breach, and may also recover from the Vendor, those amounts already paid for individual items of work which are incomplete at the time of the breach.

However, should a breach by the Vendor be caused by circumstances, beyond the control of the Vendor, and no fault of its own, so as to render the agreement impossible of performance by the Vendor, then the agreement shall be terminated. In the event of a breach, by the Vendor, in such circumstances, the State may set off, against any liability or obligations owed to the Vendor, under this agreement or otherwise, any amounts paid for individual items of work which are incomplete at the time of the breach, but shall not be entitled to liquidated damages.

The State shall give written notice, to the Vendor, of the termination, which notice shall specify the effective date thereof.

IX. TERMINATION OF AGREEMENT FOR INADEQUACY OF FUNDS

It is agreed that in the event appropriations to the Department of Human Services are not obtained and continued at a level sufficient to allow for payments to the Vendor, for the services identified in Paragraph II, the obligations of each party hereunder may be terminated at the option of the State, provided that any such termination shall be without prejudice to any obligations or liabilities of either party already accrued prior to such termination.

X. INDEMNITY

Vendor agrees to defend, indemnify, and hold harmless the State of North Dakota, its agencies, officers and employees (North Dakota), from any and all claims of any nature, including all costs, expenses, and attorneys' fees, which may in any manner result from or arise out of this agreement, except for claims resulting from or arising out of North Dakota's sole negligence. The legal defense provided by Vendor to North Dakota under this provision must be free of any conflicts of interest, even if retention of separate legal counsel for North Dakota is necessary. Vendor also agrees to defend, indemnify, and hold North Dakota harmless for all costs, expenses, and attorneys' fees incurred in establishing and litigating the indemnification coverage provided herein. This obligation shall continue after termination of this agreement.

XI. INSURANCE

A. **Required Coverages.** Vendor shall secure and keep in force during the term of this agreement, from insurance companies authorized to do business in North Dakota, the following insurance coverages covering the Vendor for any and all claims of any nature which may in any manner arise out of or result from this agreement:

- 1) Commercial general liability, including contractual coverage, with minimum liability limits of \$250,000 per person and \$1,000,000 per occurrence.
- 2) Automobile liability, with minimum liability limits of \$250,000 per person and \$1,000,000 per occurrence.
- 3) Workers' compensation coverage meeting all North Dakota statutory requirements.

B. **General Insurance Requirements.** The insurance coverages listed above must meet the following additional requirements:

- 1) Any deductible or self-insured retention amount or other similar obligation under the policies shall be the sole responsibility of the Vendor. The amount of any deductible or self-retention is subject to approval by the State.
- 2) This insurance may be in policy or policies of insurance, primary and excess, including the so-called umbrella or catastrophe form, and must be placed with insurers rated "A" or better by A.M. Best Company, Inc., provided any excess policy follows form for coverage. The policies shall be in form and terms approved by the State. "Follows form" means the excess policy must be written with the same terms and conditions as the policy to which it is excess.
- 3) North Dakota will be defended, indemnified, and held harmless to the full extent of any coverage actually secured by the Vendor in excess of the minimum requirements set forth above. The duty to indemnify North Dakota under this agreement shall be not be limited by the insurance required in this agreement.

- 4) North Dakota shall be endorsed on the commercial general liability policy, including any excess policies (to the extent applicable), as additional insureds. North Dakota shall have all the rights and coverages as Vendor under said policies. The additional insured endorsement for the commercial general liability policy shall be written on a form equivalent to the ISO 1985 CG 20 10 form, or such other form as approved by North Dakota, and shall not limit or delete North Dakota's coverage in any way based upon North Dakota's acts or omissions.
- 5) The insurance required in this agreement, through a policy to endorsement, shall include:
  - a) a "Waiver of Subrogation" waiving any right of recovery the insurance company may have against North Dakota;
  - b) a provision that the policy and endorsements may not be canceled or modified without thirty (30) days' prior written notice to the undersigned State representative;
  - c) a provision that any attorney who represents North Dakota under this policy must first qualify as and be appointed by the North Dakota Attorney General as a Special Assistant Attorney General as required by N.D.C.C. § 54-12-08;
  - d) a provision that Vendor's insurance coverage shall be primary (i.e., pay first) as respects any insurance, self-insurance or self-retention maintained by North Dakota and that any insurance, self-insurance or self-retention maintained by North Dakota shall be excess of the Vendor's insurance and shall not contribute with it;
  - e) cross liability/severability of interest coverage for all policies and endorsements.
- 6) The legal defense provided to North Dakota under the policy and any endorsements must be free of any conflicts of interest, even if retention of separate legal counsel for North Dakota is necessary.
- 7) Vendor shall furnish a certificate of insurance and, if requested, a copy of the insurance policy and all its endorsements, including the additional insured endorsement, to the undersigned State representative prior to commencement of this agreement.
- 8) Failure to provide insurance as required in this section is a material breach of contract entitling State to terminate this contract at any time effective upon delivery of notice to the Vendor.

XII. ACCESS TO BOOKS AND RECORDS

The State, federal government, and their duly authorized representatives shall have access to the books, documents, papers, and records of the Vendor which are pertinent to the services provided under this agreement for the purpose of making an audit, examination, or making excerpts and transcripts. This documentation shall be available for a period of three (3) years from the date of submission of the final expenditures report.

XIII. NOTICE

Any notice required or permitted to be given pursuant to this agreement may be personally served on either party by the party giving such notice, or may be served by certified mail, return receipt requested, addressed to the executive office of the party upon whom service is made.

XIV. INTEGRATION AND MODIFICATION

This contract constitutes the entire agreement between the Vendor and the State. No alteration, amendment, or modification in the provisions of this agreement shall be effective unless it is reduced to writing, signed by the parties and attached hereto.

XV. COLLATERAL CONTRACTS

Where there exists any inconsistency between this agreement and other provisions of collateral contractual agreements which are made a part of this agreement by reference or otherwise, the provisions of this agreement shall control.

XVI. APPLICABLE LAW

This agreement shall be governed by and construed in accordance with the laws of the State of North Dakota.

XVII. ASSIGNMENT

Neither Party shall assign this agreement and rights without the written approval of the other Party. Such approval shall not be unreasonably withheld. This agreement shall be equally binding on the respective Parties, their successors and assigns.

XVIII. CONFIDENTIAL INFORMATION

The Vendor agrees not to use or disclose any information it receives from the State under this agreement that is confidential or exempt from mandatory public disclosure except as necessary to carry out the purposes of this agreement or as authorized in advance by the State. The State agrees not to disclose any information it receives from the Vendor which the Vendor has previously identified as confidential and which the State determines in its sole discretion is protected from mandatory public disclosure under a specific exception to the North Dakota open records law, North Dakota Century Code § 44-04-18. The duty of the State and the Vendor to maintain confidentiality of information under this section continues beyond the term of this agreement, including any extensions or renewals.

XIX. OWNERSHIP OF WORK PRODUCT

All work product, equipment or materials created or purchased under this agreement belong to the State and must be delivered to State at State's request upon termination of this agreement. Vendor agrees that all materials prepared under this agreement are "works for hire" within the meaning of copyright laws of the United States and assigns to the State all rights and interests Vendor may have in the materials it prepares under this agreement, including any right to derivative use of the material. Vendor shall execute all necessary documents to enable the State to protect its rights under this section. Use of work product or materials for purposes other than the scope of this agreement must be approved in writing by the State.

XX. COMPLIANCE WITH PUBLIC RECORDS LAWS

Vendor understands that, except for disclosures prohibited in Section XVIII, the State must disclose to the public upon request any records it receives from Vendor. Vendor further understands that any records which are obtained or generated by the Vendor under this agreement, except for records that are confidential under Section XVIII, may, under certain circumstances, be open to the public upon request under the North Dakota open records law. Vendor agrees to contact the State immediately upon receiving a request for information under the open records law and to comply with the State's instructions on how to respond to the request.

XXI. ATTORNEY FEES

In the event a lawsuit is instituted by the State to obtain performance due to any kind under this agreement, and the State is the prevailing party, Vendor shall, except when prohibited by N.D.C.C. § 28-26-04, pay the State's reasonable attorney fees and costs in connection with the lawsuit.

XXII. ALTERNATIVE DISPUTE RESOLUTION – JURY TRIAL

The State does not agree to any form of binding arbitration, mediation, or other forms of mandatory alternative dispute resolution. The parties have the right to enforce their rights and remedies in judicial proceedings. The State does not waive any right to a jury trial.

VENDOR

By \_\_\_\_\_ DATE

Its \_\_\_\_\_  
(TITLE)

\_\_\_\_\_  
Vendor's Federal Identification Number

STATE OF NORTH DAKOTA

NORTH DAKOTA DEPARTMENT OF HUMAN SERVICES

By \_\_\_\_\_ DATE  
CAROL K. OLSON  
EXECUTIVE DIRECTOR

By \_\_\_\_\_ DATE  
NANCY J. MCKENZIE, DIRECTOR  
SOUTHEAST HUMAN SERVICE CENTER

By \_\_\_\_\_ DATE  
KRISTA L. ANDREWS  
CONTRACT OFFICER

**ATTACHMENT B**  
**COST PROPOSAL FORMAT**

Direct Costs

Budgets addressing a daily or monthly rate per service  
Direct Expenses

Indirect Costs

Supplies  
Overhead  
Profit

List Any applicable Prompt Payment Discount Terms.